

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FILED  
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2005 FEB 25 P 3:20

MAKSIM LUTSKOV,  
Petitioner.

v.

LOIS RUSSO,  
SUPERINTENDENT OF  
SOUZA-BARONOWSKI  
CORRECTIONAL CENTER

Petitioner's Response to Respondent's Motion To  
Dismiss Petition For Writ of Habeas Corpus

U.S. DISTRICT COURT  
DISTRICT OF MASS

04-12601-PBS

Now comes the Petitioner, Maksim Lutskov, and hereby responds to the Respondent's Motion to Dismiss Petition for Writ of Habeas Corpus.

As set forth in the Petitioner's Assented To Motion to Amend Petition For Writ Of Habeas Corpus To Strike Issue III, filed contemporaneously herewith, in his Petition, the petitioner raised three issues. All three of the issues had been raised before the Massachusetts Appeals Court, but only the first two were raised in an Application for Further Appellate Review to the Supreme Judicial Court, thus exhausting the petitioner's state court remedies on Issues I and II only. Accordingly, Issue III (arguing the cumulative effect of the errors) is not properly before this Court.

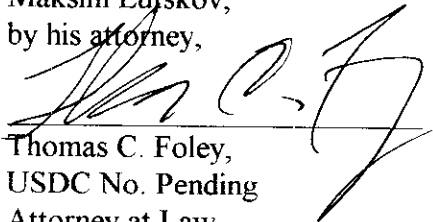
In his contemporaneously filed Assented To Motion to Amend Petition, the petitioner, with the assent of the Assistant Attorney General, has requested leave to amend his petition to strike Issue III from his petition, and to go forward on Issues I and II only. See Rose v. Lundy, 455 U.S. 509, 510 (1982) (a state prisoner who has both exhausted and unexhausted claims can obtain prompt federal review of the exhausted claims if he files a mixed petition and then amends it to remove the unexhausted claims). See also Nowaczyk v. Warden, New

Hampshire State Prison, 299 F.3d 69, 75 (1<sup>st</sup> Cir. 2002) (same); Lacy v. Gabriel, 732 F.2d 7, 12 (1st Cir. 1984) (emphasizing that, under Rose, the petitioner “was entitled all along to present only a part of the claims available to him”).

Accordingly, the Petitioner prays that the Court allow his Assented To Motion to Amend, and deny the Respondent’s Motion to Dismiss as moot.

Respectfully submitted,  
Maksim Lutskov,  
by his attorney,

February 23, 2005



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